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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 07 2007

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral researcher at [redacted] Plant Science Center ([redacted]), St. Louis, Missouri. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and new exhibits. We note that there is no evidence that counsel participated in the preparation or filing of the appeal. Nevertheless, absent evidence that the attorney-client relationship has been severed, counsel remains formally the petitioner's attorney of record.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Several witness letters, all from supervisors, professors, or collaborators, accompany the petitioner's initial filing. Discussion of selected examples follows. Professor [redacted] of Southern Illinois University at Carbondale (SIUC), where the petitioner earned her doctorate, states:

> As the director of the Plant Genomics Core Facility, I worked with [the petitioner] most directly from June 1997 to September 2000. . . .
>
> [The petitioner] was working with one of SIUC's princip[al] investigators, Associate Professor Dr. [redacted], on organ desiccation tolerance. Desiccation-tolerance is the ability to revive from the air-dried state. . . . Understanding how photosynthetic capacity can experienc[e] protoplasmic dehydration without suffering permanent injury can have a series of important implications. . . . So the key to improving economically important crops lies in the vast and relatively untapped gene pools of non-crop plants. [The petitioner] worked on such a non-crop plant called *Tortula ruralis*. *T. ruralis* is a desiccation-tolerant moss, which can survive any rate of water loss. . . .Worldwide there are very small and select groups of experts who can work on this extraordinary plant species. [The petitioner] has the skills to set her apart in this important scientific community.

> [The petitioner] made significant contributions to initiating the science of genomics in *T. ruralis*. She initiated the expressed sequence tags (EST) project of *Tortula ruralis* in order to discover . . . new genes and to see how different from other plants *T. ruralis* genes were. . . . [The petitioner] showed *T. ruralis* contained many genes that had never had anything remotely similar found in any other life form. Her work greatly advanced our understanding of the mechanisms of desiccation tolerance at [the] molecular level and laid the groundwork for future studies. . . .
>
> [The petitioner's] accomplishments greatly exceed others at the same stage of career. She is simply much more capable than other researchers of her generation. [The petitioner] is much more likely to make major contributions to an extent that is highly unlikely among her generational peers.

Dr. [redacted], Principal Investigator at the Danforth Center, describes the petitioner's work in Dr. [redacted] laboratory:

> Most of the work in my lab focuses on the study of meristems, which are stem cell-like structures of plants. It is from these cells that all the structures of the plant arise. . . . Much of the structural changes in domesticated crops have been due to selection for changes in the activities of meristems. . . . Further understanding and manipulation of meristem activity will lead to further advances in agricultural yield in a variety of growth conditions. In addition, meristems are an important model for studying cancer: meristems require strict control of cell division for their maintenance, and overproliferation of meristem cells resembles cancerous growth.
>
> The goal of our lab is to identify genes involved in meristem function. [The petitioner's] achievements since arriving in the lab are many: she identified many potential meristem genes that are targets of a lipid modification [called prenylation] I previously have shown to be involved in meristem cell proliferation. This has opened many avenues of fruitful research. . . .
>
> [A]nother important achievement of hers is the use of modern biochemistry and proteomics techniques to experimentally identify targets of this lipid modification. . . . This research is absolutely indispensable for understanding the role of these processes in meristems. Given the key role she is playing in my lab, [the petitioner] is critically important to the success of our research projects.

The petitioner submits copies of articles and abstracts that she has co-authored, and she documents 18 citations of her published work. Out of these 18 citations, 14 are self-citations by the petitioner and/or collaborators such as [redacted]. The petitioner has, therefore, documented only four independent citations of her work, an amount that does not suggest that the petitioner's work has had considerable influence outside of the institutions where she has worked or studied.

On May 27, 2005, the director issued a request for evidence, instructing the petitioner to submit further evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted an updated list of citations of her work. The list shows 31 citations, of which 19 are self-citations, leaving 11 independent citations.

The petitioner has also submitted three new letters. Dr. [redacted] in his second letter, asserts that the petitioner "performs . . . research in ways that the typical plant scientist cannot" and "is significantly more productive and creative than other plant scientists at [a] similar stage." Dr. [redacted] states that the petitioner's "breakthroughs . . . are too extensive to list here," and describes some examples in technical details, *e.g.*:

> She was . . . among the first to show that deprivation of prenylation causes mislocalization of a native plant protein. Importantly, she was among the first to demonstrate functional redundancy of two plant prenylation enzymes, both genetically and biochemically. These results have greatly impacted a large number of researchers who study protein targets of prenylation.

The record shows that about two-thirds of the citations of the petitioner's work are self-citations by herself or her collaborators. The petitioner has submitted no first-hand documentary evidence to establish that the petitioner's efforts, more than others in her specialty, "have greatly impacted a large number of researchers" in that specialty.

Professor [redacted] of Indiana University-Purdue University Indianapolis had been collaborating with the petitioner "[f]or the past eighteen months" as of June 2005. Prof. [redacted] describes this collaboration in technical detail and states that the petitioner's "groundbreaking work on the global effects of the loss of prenylation has greatly benefited my own research direction."

Professor [redacted] Director of the Division of Biology and Biomedical Sciences at Washington University in St. Louis, states that the genes the petitioner has identified "will be very useful to employ to improve drought tolerance in crop species and will have great benefits to agriculture, particularly in regions prone to periods of drought." While Prof. [redacted] asserts that the petitioner "has made remarkable contributions, which have substantially influenced the field of drought tolerance, plant development and protein prenylation as a whole," Prof. [redacted] himself appears not to have been influenced by the petitioner at the time the petition was filed in January 2004: "I am familiar with [the petitioner's] research primarily through two research presentations she was invited to give . . . in February 2005 . . . [and] in March 2005."

The director denied the petition on December 23, 2005, acknowledging the petitioner's evidence but concluding that the petitioner had failed to "adequately establish a *sustained pattern of achievement*" that would justify expectations of prospective national benefit significantly above the level expected of "exceptional" aliens in her field (who, generally, are subject to the job offer/labor certification requirement).

On appeal, the petitioner submits copies of her recent work, including an article and conference presentation abstracts. The petitioner also submits an updated citation list, showing 46 citations of her work at SIUC.

(The petitioner does not show that her more recent work at the Danforth Center has yielded any cited publications.) Unlike earlier citation lists, the list submitted on appeal does not identify the citing articles themselves, and therefore the petitioner has not shown that there has been any change in the ratio of independent citations to self-citations, the latter having comprised the overwhelming majority of the petitioner's previously documented citations.

The petitioner's statement on appeal draws heavily from two newly submitted witness letters. Dr. [redacted] a Principal Investigator at the Danforth Center, states that the petitioner is "a top-notch plant biologist" with a "stellar publication record and numerous scientific contributions to the field of plant biology." Dr. [redacted] describes the petitioner's specific achievements, but listing these accomplishments does not, in itself, establish that they are more significant or important than the work of other postdoctoral researchers in the specialty.

Professor [redacted] of Harvard Medical Center states: "Although I have not worked directly with [the petitioner], I am quite familiar with her impressive contributions on the Chromatin database," upon which Prof. [redacted] own research group has relied "extensively." Prof. [redacted] states that she "visited the Danforth Center in 2003," at which time she presumably encountered the petitioner. Like other witnesses before her, Prof. [redacted] asserts that the petitioner's publication record compares favorably to that of most researchers with comparable length of experience, and that the petitioner is familiar with rare but valuable laboratory techniques.

Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221.

Several witnesses have asserted that the petitioner's departure would impede ongoing research at the Danforth Center. We must note, here, that postdoctoral positions tend, by nature, to be short-term temporary training positions rather than tenured or career appointments. The petitioner already holds an H-1B nonimmigrant visa that entitles her to work temporarily at the Danforth Center. The denial of the instant petition will not hasten the expiry date of the approved nonimmigrant visa petition or otherwise affect its validity. If the Danforth Center intends to employ the petitioner permanently, she may work there as an H-1B nonimmigrant while an application for labor certification is pending; if otherwise, then her employment there would terminate even if she received the waiver. For these and other reasons, the perceived need for the petitioner to fill a particular position at a particular institution is often a poor argument for a waiver of the job offer requirement.

As for the assertion that the petitioner is superior to others at her level of experience, we repeat here that the statute typically requires aliens of exceptional ability to meet the requirement of a job offer (including a labor certification). 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Hence, expertise alone is not sufficient to exempt a given alien from the job offer requirement. Furthermore, in this instance the petitioner's expertise is

typically described in a more limiting fashion; she is compared to other postdoctoral researchers, the postdoctoral stage being the earliest stage in a Ph.D.'s professional career (just after completing one's studies). Such comparisons, therefore, fail to elevate the petitioner to the plateau of exceptional ability, let alone to the higher level of eligibility for a waiver that the law typically withholds even from exceptional aliens.

Influence on the field is an affirmative factor to consider in waiver applications, but the burden is on the petitioner to produce persuasive evidence of that influence. Here, the petitioner has produced little concrete evidence that her work, in particular, has had significant impact or influence outside of her collaborators at the Danforth Center and at the universities where she had studied. Describing her work does not inherently set it apart from that of others in the field, nor does explaining the overall importance of the area of research (which only addresses the issue of intrinsic merit). Heavy independent citation of her published work would aid in showing widespread recognition, but here, the petitioner has only shown that the number of citations of her work has grown, while prior submissions showed that most of her citations could be traced back to one collaborator ([redacted]. Self-citation is, of course, a common and accepted practice, to be expected when a researcher builds on his or her prior work; but self-citation is not evidence of wider impact or influence, nor does it set a given researcher apart from his or her peers to an extent beyond the regulatory definition of "exceptional," to the threshold of the national interest waiver.

At best, the present petition appears to be premature. We note that the petitioner has, in fact, filed a new petition on her own behalf, with receipt number LIN 07 011 50113. As this new petition is still pending, the AAO has not seen its record of proceeding and therefore cannot comment on its merits.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.